

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE BURTON CORPORATION,  
Opposer,

v.

MISSION VERTICAL LLC,  
Applicants

Opposition No. 91158778

CERTIFICATE OF MAILING UNDER 37 C.F.R. §2.197

The undersigned hereby certifies that this document and enclosures are being placed in the United States mail with first-class postage attached, addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on the 6th day of August, 2004.

  
Lisa Martin

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Sir:

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

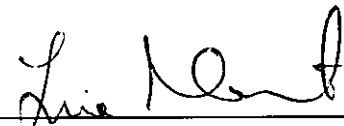
Opposer, by and through its counsel, hereby moves for Summary Judgment pursuant to Fed. R. Civ. P. 56, in favor of the Opposer and against Applicant, Mission Vertical LLC, because Applicant failed to respond to Opposer's Discovery requests, including a set of requests for admissions. Therefore, pursuant to Fed. R. Civ. P. 36(a), the admissions stand admitted by Applicant. *See also* T.B.M.P. §411.02. The admissions are material and controlling with respect

to the essential issues in the opposition. These admissions establish that Applicant's mark should not be registered pursuant to 15 U.S.C. §1052(d) and 1063.

Therefore, there is no genuine issue as to any material fact, and the Opposer is entitled to judgment as a matter of law. T.B.M.P. §528. Accordingly, Opposer respectfully requests that court grant Opposer's Motion For Summary Judgment.

Respectfully submitted,

THE BURTON CORPORATION

By: \_\_\_\_\_

Lisa W. Martin  
Douglas R. Wolf  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
Tel. 617-646-8000  
Fax 617-646-8646  
Attorneys for Opposer

Date: August 6, 2004  
Docket No.: B0932/50108US00

THE BURTON CORPORATION,  
Opposer,

**v.**

MISSION VERTICAL LLC,

## Applicants

Opposition No. 91158778

The undersigned hereby certifies that this document and enclosures are being placed in the United States mail with first-class postage attached, addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on the 6th day of August, 2004.

**Lisa Martin**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Sir:

Pursuant to Fed. R. Civ. P. 56, Opposer submits this Memorandum in Support of its Motion for Summary Judgment.

Applicant, Mission Vertical LLC has failed to respond to any of Opposer's discovery requests, served on June 15, 2004, including Opposer's First Set of Request for Admissions, a copy of which is attached hereto as Exhibit A. Opposer's First Set of Request for Admissions therefore stand admitted by Applicant, pursuant to T.B.M.P. §411.02.<sup>1</sup>

<sup>1</sup> Applicant also failed to seasonably respond to OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT and OPPOSER'S FIRST REQUEST TO APPLICANT FOR PRODUCTION OF DOCUMENTS & THINGS. However, these failures to comply with the rules are not relied upon for purposes of this motion.

Due to Applicants admissions, Opposer has proven the elements of its case and no genuine issue of material fact exists. Therefore, Opposer's Motion for Summary Judgment should be granted, and an Order denying registration of Applicants mark should be issued.

### UNDISPUTED FACTS

Applicant filed an intent-to-use Application for registration of the word mark MISSION VERTICAL on November 19, 2002 with the U.S. Patent and Trademark Office. The Application was filed in the name of Mission Vertical LLC, and issued Application Serial No. 76/471134. The Application was published for opposition on August 28, 2003. (Exhibit B).

On November 21, 2003, Opposer filed a Notice of Opposition against registration of the mark MISSION VERTICAL, Application Serial No. 76/471134, a copy of which is attached hereto as Exhibit C.

On June 15, 2004, Opposer served Opposer's First Set of Request for Admissions via first class mail, attached hereto as Exhibit A. (Martin Decl. ¶ 2). Although more than thirty-five (35) days have passed since service, to date Applicant neither answered nor objected to Opposer's First Set of Request for Admissions. (Martin Decl. ¶ 3). Therefore, all requests for admissions are deemed admitted.

Opposer, The Burton Corporation, established rights in the MISSION mark by adopting and making extensive and exclusive use of the mark at common law since at least as early as August 2000 in connection with bindings, and Applicant was aware of Opposer's rights when it filed the Application for MISSION VERTICAL. MISSION VERTICAL is confusingly similar to Opposer's mark, MISSION. (See Exhibit A, admissions number 1 & 2 which incorporate the definition provided in ¶ G of Opposer's First Set of Interrogatories to Applicant (attached hereto

as Exhibit D), which defines Opposer's mark as described in paragraph 1 of the Notice of Opposition.)

### ARGUMENT

Summary judgment is appropriate where no genuine issue as to any material fact exists. Fed. R. Civ. P. 56(c); *Greyhound Corp. v. Both Worlds, Inc.* 6 USPQ2d 1635 (TTAB 1988). No genuine issue as to any material fact exists in this case, because Applicant has admitted all elements of Opposer's claim of likelihood of confusion under Lanham Act § 1052(d). Opposer is entitled to summary judgment as a result of such admissions.

"Responses to requests for admissions must be served within 30 days after the date of service of the requests." *See* T.B.M.P. §407.03(a). In cases where the discovery requests are served via first class mail, five days are added to the period for response. If the party served with the admissions fails to timely respond, the requests will stand admitted. T.B.M.P. §407.03(a).

The Trademark Trial and Appeal Board has often applied this rule. In *Pinocchio's Pizza Inc. v. Sandra Inc.*, 11 USPQ2d 1227 (TTAB 1989), the Board relied upon the admissions by virtue of the unanswered requests for admissions. In *Royal Bodycare, Inc. v Miracle Minerals, Inc.* Cancellation No. 30,109,2001 WL 403256 (Trademark Tr. & App. Bd.), the Board stated that "the requested admissions are deemed to be admitted by respondent since respondent neither responded to petitioner's request nor objected thereto within thirty days after the date of service of petitioner's request for admissions." *Id.* at 2.

These decisions are directly relevant to the current proceeding. The deadline to respond to Opposer's First Set of Request for Admissions was July 20, 2004. To date, Applicant has not responded or objected to these Requests for Admissions, notwithstanding a telephone call by Opposer's counsel to determine the status of the responses to the Discovery requests on July 22,

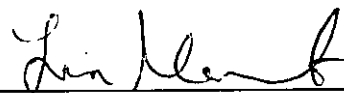
2004. Opposer's counsel never received a return phone call. As a result of Applicant's failure to respond to Opposer's First Set of Request for Admissions, the subject matter of the requests, which include the similarity of the marks (Exhibit A, admissions 2 & 4), the similarity of the goods (Exhibit A, admissions 3, 5, 6, & 7), the similarity of the channels of trade (Exhibit A, admissions 5, 9 & 10), the likelihood of confusion (Exhibit A, admissions 2, 4, 5, 6, & 7), and damage to the Opposer (Exhibit A, admission 11) stand admitted. These admissions are more than sufficient for a finding of likelihood of confusion under the circumstances of the case.

Opposer's Motion for Summary Judgment should be granted. There is no issue of material fact that would preclude the grant of Summary Judgment in this case. Opposer is entitled to judgment in its favor, and an Order denying registration of the Applicants mark.

Notwithstanding, in the event that the Board denies Opposer's Motion for Summary Judgment, Opposer respectfully requests that the Board grant Opposer sufficient time to file a Motion to Compel Discovery.

Respectfully submitted,

THE BURTON CORPORATION

By: 

Lisa W. Martin  
Douglas R. Wolf  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
Tel. 617-646-8000  
Fax 617-646-8646  
Attorneys for Opposer

Date: August 6, 2004  
Docket No.: B0932/50108US00

# **EXHIBIT A**

ATTORNEY'S DOCKET NO.: B0932.50108US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

=====		
THE BURTON CORPORATION,	:	
	:	
Opposer	:	
	:	
v.	:	Opposition No. 91158778
	:	
MISSION VERTICAL LLC,	:	
	:	
Applicant	:	
=====		

OPPOSER'S FIRST SET OF  
REQUEST FOR ADMISSIONS

Opposer, The Burton Corporation, hereby directs the following Requests for Admissions to Applicant, Mission Vertical LLC (MVL), to be answered fully in writing and under oath.

DEFINITIONS AND INSTRUCTIONS

Opposer hereby incorporates the Definitions and Instructions set forth in  
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT.



REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that on the date that United States Trademark Application Number 76/471,134 was signed, Applicant was aware of Opposer's rights in the MISSION mark.

REQUEST FOR ADMISSION NO: 2

Admit that MISSION VERTICAL is confusingly similar to Opposer's mark MISSION.

REQUEST FOR ADMISSION NO: 3

Admit that the goods described in Application Serial Number 76/471,134 are related to the goods sold under Opposer's mark, MISSION.

REQUEST FOR ADMISSION NO: 4

Admit that Applicant's use of the mark MISSION VERTICAL as described in Application Number 76/471,134 is likely to cause confusion with Opposer's MISSION mark.

REQUEST FOR ADMISSION NO: 5

Admit that use of the MISSION VERTICAL mark for the goods described in Application Number 76/471,134 is likely to be seen as a natural expansion of the line of products sold under Opposer's MISSION mark.

REQUEST FOR ADMISSION NO: 6

Admit that use of the mark MISSION VERTICAL for the goods described in Application Number 76/471,134 is likely to lead consumers to mistakenly believe or be confused as to whether there is an association between Applicant or Applicant's Goods and Opposer or goods provided under Opposer's MISSION mark.

REQUEST FOR ADMISSION NO: 7

Admit that use of the mark MISSION VERTICAL for the goods described in Application Number 76/471,134 is likely to cause consumers to mistakenly believe or be confused as to whether Opposer is the source of the goods provided by Applicant under the mark MISSION VERTICAL

REQUEST FOR ADMISSION NO: 8

Admit that Applicant had knowledge that Opposer advertised its goods under the mark MISSION.

REQUEST FOR ADMISSION NO: 9

Admit that Applicant's goods travel in identical trade channels as Opposer's goods sold under the mark MISSION.


REQUEST FOR ADMISSION NO: 10

Admit that the ordinary purchaser or potential purchaser for goods sold by either Applicant or Opposer is the same.

REQUEST FOR ADMISSION NO: 11

Admit that Opposer will be damaged by Applicant's registration of the MISSION  
VERTICAL mark, as shown in Application Serial No. 76/471,134.

Jan 15, 2004  
Date

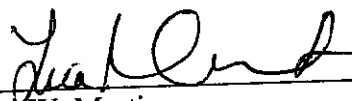
  
Lisa W. Martin  
Douglas R. Wolf  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
617-720-3500

Attorneys for Opposer  
The Burton Corporation

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2004 I served a copy of OPPOSER'S FIRST SET OF INTERROGATORIES ~~TO~~ APPLICANT, OPPOSER'S FIRST SET OF REQUEST FOR ADMISSIONS, and OPPOSER'S FIRST REQUEST TO APPLICANT FOR PRODUCTION OF DOCUMENTS & THINGS on counsel for Applicant, Mission Vertical LLC by first-class mail, postage-prepaid, addressed to:

Dennis P. Cawley  
Baker & Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304

  
\_\_\_\_\_  
Lisa W. Martin  
Douglas R. Wolf  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Federal Reserve Plaza  
Boston, MA 02210-2211  
Tel.: (617) 720-3500

Attorneys for Opposer  
The Burton Corporation

# **EXHIBIT B**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2004-08-06 20:36:13 ET**

**Serial Number:** 76471134

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** MISSION VERTICAL

**Standard Character claim:** No

**Current Status:** An opposition is now pending at the Trademark Trial and Appeal Board.

**Date of Status:** 2003-12-15

**Filing Date:** 2002-11-19

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 113

**Attorney Assigned:**  
AXILBUND MELVIN T Employee Location

**Current Location:** 845 -TTAB

**Date In Location:** 2003-12-30

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Mission Vertical LLC

**Address:**  
Mission Vertical LLC  
209 Monroe Street  
Old Forge, PA 18518  
United States  
**Legal Entity Type:** Ltd Liab Co  
**State or Country Where Organized:** Delaware

---

**GOODS AND/OR SERVICES**

---

**International Class:** 025  
Ski and snowboarding related clothing, namely, bibs, gloves, masks, pants, suits and ski wear; and ski

boot bags

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**Basis:** 1(b)

---

**ADDITIONAL INFORMATION**

(NOT AVAILABLE)

**MADRID PROTOCOL INFORMATION**

(NOT AVAILABLE)

**PROSECUTION HISTORY**

2003-12-15 - Opposition instituted for Proceeding

2003-09-29 - Extension of time to oppose - Filed

2003-08-26 - Published for opposition

2003-08-06 - Notice of publication

2003-06-17 - Approved for Pub - Principal Register (Initial exam)

2003-06-10 - Case file assigned to examining attorney

---

**CONTACT INFORMATION**

**Correspondent**

Dennis Cawley (Attorney of record)

DENNIS CAWLEY  
BAKER HOSTETLER LLP  
1050 CONNECTICUT AVE. N.W. SUITE 1100  
WASHINGTON, DC 20036-5304

**Phone Number:** (202)861-1500

**Fax Number:** (202) 861-1783

---

# **EXHIBIT C**



Attorney's Docket: B0932.50108US00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Opposer:	The Burton Corporation	
Applicant:	Mission Vertical LLC	Opposition No.
Serial No.:	76/471134	
Filed:	November 19, 2002	
Mark:	MISSION VERTICAL	
Published:	August 26, 2003	

---

**CERTIFICATE OF MAILING UNDER 37 CFR §1.8(a)**

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Box TTAB Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on the 21<sup>st</sup> day of November, 2003.

*Kate Emerson*  
\_\_\_\_\_  
Kate Emerson

---

Box TTAB Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3515

Sir:

**NOTICE OF OPPOSITION**

This Notice of Opposition relates to the application of Mission Vertical LLC, a corporation of Delaware, Serial No. 76/471134, filed November 19, 2002 and published in the Official Gazette on August 26, 2003.

The Burton Corporation ("Burton"), organized and existing under the laws of the state of Vermont, having its principal place of business at 80 Industrial Parkway, Burlington, Vermont 05401, believes it will be damaged by the registration of MISSION VERTICAL and hereby opposes the same.

Serial No.: 76/471134

-2-

The grounds for the opposition are as follows:

1. Burton has made extensive and exclusive use of the mark MISSION at common law since at least as early as August 2000 in connection with bindings.
2. Notwithstanding Burton's use of the MISSION trademark for bindings at least as early as August 2000, Mission Vertical LLC filed an application under Serial No. 76/471134, on November 19, 2002, to register the mark MISSION VERTICAL for ski and snowboard related equipment, namely, portable ski carriers, bindings and parts therefore, brakes, edges, poles, ropes, scrapers, and wax; and ski and snowboard binding equipment comprising bag and detachable strap.
3. The Mission Vertical LLC mark MISSION VERTICAL is confusingly similar to Burton's mark for MISSION which is protected at common law.
4. The Burton trademarks are famous and represent high quality to customers throughout the world.
5. Potential purchasers of Mission Vertical LLC's products are likely to believe that such products originate with, or are authorized or approved by Burton when in fact they are not.
6. If Mission Vertical LLC is granted the registration on the application herein opposed, it would thereby obtain a prima facie exclusive right to use the mark MISSION VERTICAL which would damage Burton's rights and its mark MISSION.

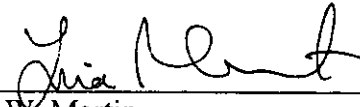
Serial No.: 76/471134

-3-

WHEREFORE, Burton believes it will be damaged by said application for registration and prays that this opposition be sustained under 15 U.S.C. § 1052(d).

The filing fee for this opposition in the amount of \$300.00 is enclosed. This opposition is submitted in duplicate. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to our Deposit Account No. 23/2825.

Respectfully submitted,

By   
\_\_\_\_\_  
Lisa W. Martin  
Douglas R. Wolf  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Ave.  
Federal Reserve Plaza  
Boston, MA 02210  
Attorneys for Opposer – The Burton Corporation

Date: November 21, 2003  
x11/24/03x

# **EXHIBIT D**

ATTORNEY'S DOCKET NO.: B0932.50108US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE BURTON CORPORATION,	:	
	:	
Opposer	:	
	:	
v.	:	Opposition No. 91158778
	:	
MISSION VERTICAL LLC,	:	
	:	
Applicant	:	

OPPOSER'S FIRST SET OF  
INTERROGATORIES TO APPLICANT

Applicant, Mission Vertical LLC, is hereby required, pursuant to 37 C.F.R. §2.120 and Rule 33 of the Federal Rules of Civil Procedure, to answer under oath and within thirty (30) days each of the following interrogatories.

DEFINITIONS AND INSTRUCTIONS

A. The term "Applicant" as used in these interrogatories includes, without limitation, not only the MVL, but also any related company or organization (including licensees and franchisees in the United States and elsewhere) and any predecessor. When an answer is supplied with respect to any predecessor or related company, this fact should be stated, and such predecessor or related company should be fully identified by name and principal place of business.

B. The term "document" as used in these interrogatories shall have the broadest meaning specified in Rule 34 of the Federal Rules of Civil Procedure and includes (without limitation and regardless of whether the document is an original, a copy or a draft) all contracts, agreements, memoranda, assignments, licenses, minutes of

meetings, minutes books, books of account, orders, invoices, statements, computation sheets, notebooks, reports, photographs, drawings of any kind, tracings, blueprints, sketches, charts, catalogs, brochures, communications of any kind (except oral), letters, notes (in pencil, ink or typewritten), notes of record of oral communications, instructions, telegrams and other messages, and printed material of any kind, including advertisements, whether or not the writing is privileged or within the Applicant's possession, custody or control.

C. In response to a request for identification of a document, furnish the following:

- (1) The name and date of the document.
- (2) The name and address of the person originating the document.
- (3) The name and address of the person, if any, to whom the document was addressed.
- (4) The names and addresses of all persons to whom copies of the document were to have been or have been sent.
- (5) The company or organization with which all such persons in parts C(2), C(3) and C(4) above were connected at the date of the document.
- (6) Whether the Applicant has possession, custody or control of the original document or a copy thereof.
- (7) If the Applicant is not in possession, custody or control of the original document or a copy thereof, the name and address of the person having possession, custody or control of the original or a copy of the document.
- (8) The occasion for and/or circumstances under which the document was prepared.

D. The term "person" or "persons" as used in these interrogatories includes, without limitation, any person or juristic person, as those terms are defined in Section 45 of the Lanham Act, 15 U.S.C. §1127.

E. Where an interrogatory requested the identification of a person or persons, state the full name, title and present address (or if unknown, the last known address), and

the present employer (or if unknown, the last known employer) of each such person or persons.

F. As used herein "Applicant's Mark" refers to the Applicant's mark MISSION VERTICAL that is the subject of U.S. Trademark Application Serial No. 76/471,134.

G. As used herein, "Opposer's mark" refers to the mark MISSION referred to by Opposer in Paragraph 1 of the Notice of Opposition.

H. As used herein, "Applicant's goods" refers to goods distributed, sold, or intended to be sold or distributed under Applicant's mark, MISSION VERTICAL.

### INTERROGATORIES

#### INTERROGATORY NO. 1

Describe the circumstances under which the Applicant selected Applicant's Mark, identifying all the documents relating thereto. Include in this answer an identification of the person or persons who selected Applicant's Mark and an identification of all other marks that were considered along with Applicant's Mark for possible adoption and use by the Applicant. With regard to any other marks identified, state the reason each was not selected.

#### INTERROGATORY NO. 2

Identify the results and all documents relating thereto, of each trademark search the Applicant performed or had performed for it relating to any of the marks identified in the answer to the preceding Interrogatory. Include in this identification: the date the search was ordered, an identification of the person or persons who ordered the search, the

date the search was performed, an identification of the person or persons who performed the search, the date the search results were reported, and an identification of the person or persons who reported the search results and to whom the search was reported.

INTERROGATORY NO. 3

Identify all documents relating to and describing the circumstances under which the Applicant first learned of the Opposer or Opposer's mark.

INTERROGATORY NO. 4

Describe in detail Applicant's first use, if any, of Applicant's Mark anywhere, including, without limitation, the date the Applicant's Mark was first used, the goods or services in relation to which Applicant's Mark was first used, the geographic region of first use, and the nature of such use, Applicant's first advertising and promotional activities using Applicant's Mark, the consumers that first received Applicant's Goods, and the method/locations where consumers were first able to obtain Applicant's Goods.

INTERROGATORY NO. 5

Describe in detail Applicant's first use, if any, of Applicant's Mark in the United States, including, without limitation, the date of first use in the United States, the goods or services with which Applicant's Mark was first used in the United States, the manner of the use of the mark in relation to the goods or services, Applicant's advertising using the mark in the United States, the type of consumers first receiving the Applicant's Goods in



the United States, the methods/locations where consumers were first able to obtain Applicant's Goods in the United States.

INTERROGATORY NO. 6

Identify all documents which describe in detail the current state of Applicant's Marketing plans.

INTERROGATORY NO. 7

Identify all documents relating to Applicant's current use, if any, of Applicant's Mark in commerce including Applicant's advertising using Applicant's Mark, and the consumers that use Applicant's Goods.

INTERROGATORY NO. 8

Identify and describe all goods or services in connection with which Applicant has used or intend to use Applicant's Mark or variations thereof by identifying and describing each different such product and all literature or prospective literature for each (i.e., every style of tag, label, package, sign, poster, point-of-sale display, brochure, advertisement in any medium, or any other marketing or promotional item used or intended to be used in connection with each such product).

INTERROGATORY NO. 9

Describe in detail the Applicant's prospective and/or current channels of trade for each of its goods on or in connection with which the Applicant's Mark is used or is intended to be used. Intended to be included in this answer are lists of all distributors, wholesalers or retail stores of any kind who carry, have carried, or are expected to carry any of Applicant's goods, and description of the types of customers to whom such goods offered under Applicant's Mark are ultimately intended to be sold, including, but not limited to, whether said customers are wholesale, or retail or both. For each type of customer identified, state the location thereof and the annual dollar volume of sales per product(s) from the time the use of Applicant's Mark was initiated to the present. Identify all documents describing, identifying and reporting the types of customers and sales to such customers.

INTERROGATORY NO. 10

For each channel of trade identified in response to the preceding Interrogatory, identify all documents describing, identifying and reporting the sales or intended sales for such channels, specifically identifying documents which state the annual dollar volume of sales handled in each channel for each of its goods from the time the use of Applicant's Mark was initiated to the present and state the annual sales in terms of unit and dollar volume of the product from the date of first sale(s) to date.

INTERROGATORY NO. 11

Describe how the Applicant's goods are sold or are intended to be sold or distributed.

INTERROGATORY NO. 12

Describe the manner in which the Applicant advertises or will advertise its goods. Include in this answer: an identification (by name of publication, date, issue number and page number) of any printed advertisement for such goods, an identification of all of, if any, Applicant's catalogs which refer to Applicant's goods, the amount spent by Applicant on advertising its goods, and an identification of the person or persons connected with Applicant who is/are or will be most directly in charge of the advertising for Applicant's goods.

INTERROGATORY NO. 13

Identify each instance of which the Applicant has had knowledge, directly or indirectly, of any actual or purported association or confusion of any type between the Applicant and the Opposer arising, in whole or in part, from contemporaneous use, adoption, or advertisement of their marks. For illustrative purposes only and without limiting the foregoing, such instances would include misdirected inquiries, orders, cancellations or returns; misassumptions as to the source of origin; and complaints or comments as to association or confusion or from which association or confusion may be inferred.

INTERROGATORY NO. 14

Identify each type of consumer using or buying Applicant's Goods.

INTERROGATORY NO. 15

Describe in detail each type of consumer to which Applicant's Goods are marketed, including, without limitation, consumers buying Applicant's Goods for the purpose of providing them to others and consumers that are end users of Applicant's Goods.

INTERROGATORY NO. 16

Identify all advertisers and prospective advertisers for Applicant's Goods.

INTERROGATORY NO. 17

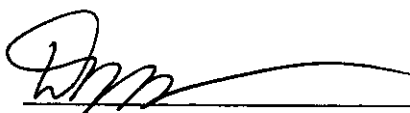
Identify all agreements relating to Applicant's Mark, specifically indicating in which geographic locations such agreements apply.

INTERROGATORY NO. 18

Identify each person who assisted in furnishing answers to these Interrogatories, specifying, for each person, the numbers of the Interrogatories for which he or she supplied information.

Date:

June 15, 2004



Douglas R. Wolf  
Lisa W. Martin  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Federal Reserve Plaza  
Boston, MA 02210  
Tel: (617) 720-3500

Attorneys for Opposer  
The Burton Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

\_\_\_\_\_  
THE BURTON CORPORATION,  
Opposer,

v.

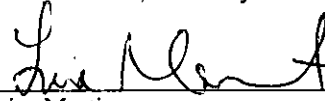
\_\_\_\_\_  
MISSION VERTICAL LLC,  
Applicants  
\_\_\_\_\_

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Opposition No. 91158778

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §2.197**

The undersigned hereby certifies that this document and enclosures are being placed in the United States mail with first-class postage attached, addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on the 6th day of August, 2004.

  
\_\_\_\_\_  
Lisa Martin

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Sir:

**DECLARATION OF LISA MARTIN IN SUPPORT OF OPPOSER'S MOTION FOR  
SUMMARY JUDGMENT**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom, hereby declares as follows:

1. I am an attorney at the law firm of Wolf Greenfield & Sacks, P.C., counsel for The Burton Corporation;

2. On June 15, 2004, Opposer's counsel served on Applicants counsel, via first class mail, Opposer's First Set of Request for Admissions. Exhibit A to Opposer's Memorandum in Support of its Motion for Summary Judgment is a true and correct copy of Opposer's First Set of Request for Admissions, along with the Certificate of Service.

3. To date, counsel for Opposer has not received responses or objections to the Admissions. Opposer's counsel called Applicants counsel on July 22, 2004 in order to determine the status of the Discovery responses. Opposer's counsel never received a return phone call.

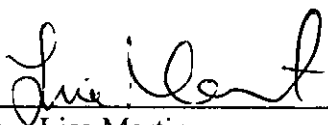
4. Exhibit B to Opposer's Memorandum in Support of its Motion for Summary Judgment is a true and correct copy of the Patent and Trademark Office record for Application Serial No. 76/471134, as of August 6, 2004.

5. Exhibit C to Opposer's Memorandum in Support of its Motion for Summary Judgment is a true and correct copy of Opposer's Notice of Opposition, filed with the Trademark Trial and Appeal Board on November 21, 2003.

6. Exhibit D to Opposer's Memorandum in Support of its Motion for Summary Judgment is a true and correct copy of Opposer's First Set of Interrogatories, served simultaneously with Opposer's First Set of Request for Admissions.

I declare that all statements herein made of my knowledge are true; and all statements made herein on information and belief are believed to be true.

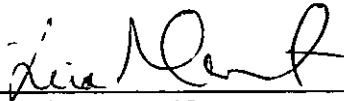
Date: August 6, 2004

By:   
Name: Lisa Martin  
Title: Attorney for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that the OPPOSER'S MOTION FOR SUMMARY JUDGMENT, OPPOSER'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT and DECLARATION UNDER 37 C.F.R. SECTION 2.20 was served by mailing a copy, first class, postage prepaid to counsel of Applicant, addressed as follows:

Dennis P. Cawley  
Baker & Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D. C. 20036-5304

  
\_\_\_\_\_  
Douglas R. Wolf  
Lisa W. Martin  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Federal Reserve Plaza  
Boston, MA 02210-2211  
Tel.: (617) 646-8000

Attorneys for Opposer  
The Burton Corporation

Date: August 6, 2004